

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1360 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AYESHBIBI WD/O ISMAIL IBRAHIM CONTRACTOR

Versus

HEIRS OF MIYA MOHMED IBRAHIM .

Appearance:

MR JV DESAI for the Appellant.
MR YN RAVANI for Respondents No. 1 and 2.
MR SA QURESHI for Respondents No. 3 and 4.
Respondent No.5 served.

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 21/03/97

ORAL JUDGEMENT

Appellant-original plaintiff has filed the present appeal under S.96 of the Code of Civil Procedure challenging the judgment and decree dated 24.11.1994 passed by the learned 4th Civil Judge (SD), Bharuch, in

Special Civil Suit No. 147 of 1982.

2. The appellant filed Spl.Civil Suit No. 147/82 in the court of the learned Civil Judge (SD), Bharuch, for administration of the properties left by deceased Ismail Ibrahim Contractor. In plaint para 14, the appellant valued the suit as per the provision of S.6(iv)(i) of the Bombay Court Fees Act at Rs.200/- (for short 'the Act') and accordingly affixed court-fee stamps of Rs.20/-. For the prayer of declaration and injunction, the appellant valued the suit for the said relief as per the provision of S.6(iv)(j) of the Act and paid court fees of Rs.30/-. However, the appellant valued the suit for the purpose of jurisdiction and advocate's fees at Rs.2,10,000/-.

3. During the pendency of the suit, original defendants no. 1 and 2 expired and their heirs were not brought on record within the period of limitation. As the heirs of original defendants no.1 and 2 were not brought on record, and the application for bringing the heirs of deceased defendants no. 1 and 2 on record was dismissed, original defendants no. 3 and 4 filed application Ex.168 under Order 15 of the Code of Civil Procedure for dismissal of the suit, in absence of defendants no. 1 and 2. The learned 4th Joint Civil Judge (SD), Bharuch allowed application Ex.168 and dismissed the suit of the plaintiff by his order dated 24.11.1994, which has given rise to filing of this appeal by the appellant-original plaintiff.

4. Learned Advocate for Respondents No. 1/1 to 1/12 and 2/1 to 2/8, who are the heirs of original defendants no. 1 and 2 has raised a preliminary objection that the appeal is not maintainable in this court in view of S.8 of the Suits Valuation Act, 1887. It is contended that on the suit filed by the appellant, he paid court-fees of Rs.50/- under S.6(iv)(i) and 6(iv)(j) of the Act and for the purpose of valuation of jurisdiction also, the same would cover as per the provision of S.8 of the Suits Valuation Act. It is therefore, submitted that even though the suit was registered as a Special Civil Suit, as the same was valued at Rs.200/- for the purpose of court-fees being suit for administration, the appeal would lie to the District Court. In support of this submission, the learned Advocate for the Respondents has relied on the judgment of the Division Bench of this High Court in NAZARALI KAZAMALI AND OTHERS vs. FAZLANBIBI AND OTHERS, AIR 1975 Guj. 81. Facts of the above case were that the suit for administration was filed in the court of the Civil Judge (SD), wherein fixed court-fees as per provision of S.6(iv)(i) of the Act was paid even though

the suit was valued for the purpose of jurisdiction at Rs.1,00,000/-. Division Bench of this Court held that the suit for administration of a deceased Mahomedan which in its essence was a suit for accounts falling under Sec.6(iv)(i) of the Act, and which was valued at Rs.100/for purposes of court-fees but which was valued at Rs.1,00,000/- for purposes of jurisdiction does not come within the excluded category of suits specified in Section 8 of the Suits Valuation Act, and as such by virtue of S.8 of the Suits Valuation Act, the value put by the plaintiff for payment of court-fees will also be the valuation for purposes of jurisdiction. In view of the above finding, the Division Bench held that the appeal would lie to the District Court. Facts of the case on hand would squarely fall within the ratio laid down by the Division Bench in NAZARALI's case (supra).

5. Learned Counsel for the Respondents also relied on S.26 of the Bombay Civil Courts Act, 1869, which is as under :

" 26. In all suits decided by a Civil Judge of which the amount or value of the subject-matter exceeds fifty thousand rupees, the appeal from his decision shall be direct to the High Court."

Thus, in view of S.26 of the Bombay Civil Courts Act, when the value of the subject-matter of the suit does not exceed Rs.50,000/-, appeal shall lie to the District Court and not to the High Court.

6. In view of the provision of S. 8 of the Suits Valuation Act and the provision contained in S. 26 of the Bombay Civil Courts Act, the present appeal is not maintainable in this court. Therefore, the preliminary objection raised by the learned Counsel for the Respondents, deserves to be upheld.

7. In the result, the present appeal filed by the appellant is not maintainable in this court and therefore, I direct the office that the appeal memo with the accompaniments thereto be returned to the appellant for presentation to the appropriate court. The appellant shall present the appeal to the appropriate court within 10 days from the receipt of the original appeal memo and its accompaniments. Appeal stands disposed of as not maintainable before this Court. In view of the facts and circumstances of the case, there shall be no order as to costs of this appeal. Office is directed to return the R

& P of Special Civil Suit No. 147/82 to the trial court
forthwith.

(abraham)